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IN THE

Supreme Court of the United States

October Term, 1936—No. [redacted] 38

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Petitioner,

against

LOUIS H. PINK, Superintendent of Insurance of the State of New York, as Liquidator of the Southern Surety Company of New York,

Respondent.

MOTION OF SURETY ASSOCIATION OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*, AND BRIEF OF *AMICUS CURIAE*.

Ernest L. Walbridge

ALLAN C. ROWE,

Counsel for Surety Association of America.

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Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

May it Please the Court:

The undersigned, as counsel for the Surety Association of America, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae.*

ALLAN C. ROWE,
Counsel for Surety Association of America.

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BRIEF OF SURETY ASSOCIATION OF AMERICA AS *AMICUS CURIAE*

Statement

SURETY ASSOCIATION OF AMERICA, which submits this brief, is an association composed of forty-two companies engaged in the surety business and transacting annually over ninety per cent. of the total surety business carried on by companies organized in the United States.

One of the purposes of the Association is to regulate and standardize the forms employed by its members in their dealings with the public and with each other, to the end of securing both a uniform system of transacting business and certainty and definiteness in the meaning and interpretation of their contracts.

In the present day insurance of surety risks the element of reinsurance is of paramount importance. In the year 1936 the members of the Surety Association licensed to do business in New York received in premiums (not including reinsurance accepted) $76,057,391 and paid out of that sum to reinsuring companies $20,578,424 in premiums for reinsurance, thus indicating that twenty-seven per cent. of the annual business was reinsured. Many States have enacted laws which require the reinsurance of all uncollateralized risks in excess of a certain percentage of the insurer's assets. A few of such States permit the original insured to recover directly upon such reinsurance contracts if the original insurer becomes insolvent, but in twenty-six States and territories the original insured has no remedy over against a solvent reinsurer, even though the reinsurance was required by statutory enactment. In addition to such compulsory reinsurance, most insurance companies voluntarily reinsure a large portion of their risks, to secure greater distribution of losses and consequent stability. In many cases insurance carriers refuse to assume a risk unless satisfactory reinsurance for a large percentage of the liability can be secured.

To meet this situation the Surety Association prepared in 1930 the Standard Form of Reinsurance Agreement involved in the instant case and recommended its use to all members of the Association. It has been adopted by all of them.

As a result of the financial crisis recently experienced seventeen former members of the Surety Association have been forced into liquidation of some sort and are now in the hands of liquidators or receivers. Prior to their insolvency these insurers reinsured a large percentage of their risks with other members of the Association using the Standard Form employed in the instant case. Such re-

insurance in favor of insolvent insurers involves in the aggregate very large sums and covers every possible type of risk in all parts of the United States.

It is of the utmost importance both to the liquidators of the insolvent companies and to the solvent reinsurers, to secure from this Court a final construction of the meaning and effect of the standard reinsurance contract involved and particularly as to whether such contract differs in its meaning and effect from the contract which was construed in *Allemannia Insurance Co.* v. *Firemen's Insurance Co.*, 209 U. S. 326. This is peculiarly so because of the apparent dependence of some courts upon the decision of this Court in the *Allemannia* case as settling forever all possible rights and liabilities which can or may arise from any form of reinsurance.

It is respectfully submitted that it cannot be urged that the remedy lies in the adoption by the Surety Association and its members of a new form of contract definitely excluding the construction adopted in the *Allemannia* case. Any new form of contract with more positive terms could not apply to the present mass of claims and litigations with which the members of the Surety Association are now faced.

WHEREFORE, Surety Association of America, as *Amicus Curiae*, respectfully prays that the petition of the Fidelity & Deposit Company of Maryland for the issuance of a writ of certiorari to review the decision of the Circuit Court of Appeals for the Second Circuit be granted.

Dated New York, May 21, 1938.

Ernest L. Wilkinson

ALLAN C. ROWE,
Counsel for Surety Association of America, Amicus Curiae.